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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, : 09-CR-466(BMC)
-against- : United States Courthouse
JOAQUIN GUZMAN LOERA, : Brooklyn, New York
Defendant. : Tuesday, January 29, 2019
: 9:30 a.m.
X

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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A P P E A R A N C E S: (Continued.)

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Proceedings

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1 (In open court.)

2 (Defendant present in open court.)

3 COURTRoom DEPUTY: All rise. The United States
4 District Court for the Eastern District of New York is now in
5 session. The Honorable Brian M. Cogan is now presiding.

6 (Honorable Brian M. Cogan takes the bench.)

7 COURTRoom DEPUTY: Calling criminal cause for jury
8 trial in Docket No. 09-CR-466, *United States of America*
9 *against Joaquin Guzman Loera.*

10 Counsel, please note your appearances for the
11 record.

12 MS. GOLDBARG: For the United States of America,
13 Assistant United States Attorney Andrea Goldbarg.

14 Good morning, your Honor.

15 MR. BALAREZO: A. Eduardo Balarezo for Joaquin Guzman
16 Loera.

17 Good morning, your Honor.

18 (Defendant enters the courtroom at 9:36 a.m.)

19 COURTRoom DEPUTY: All rise.

20 THE COURT: Good morning. Let's have the jury in,
21 please.

22 COURTRoom DEPUTY: Jury entering.

23 (Jury enters courtroom at 9:38 a.m.)

24 THE COURT: All right. Everyone be seated. Good
25 morning, ladies and gentlemen.

Roberts - Direct/Mr. Lichtman

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1 THE JURY: (Collectively) Good morning.

2 THE COURT: The Government having rested, how would
3 the defense like to proceed.

4 MR. LICHTMAN: Judge, we're going to be calling for
5 our first witness FBI Agent Paul Roberts.

6 THE COURT: All right.

7 (Witness takes the witness stand.)

8 COURTRoom DEPUTY: Please raise your right hand.

9 PAUL ROBERTS, called by the Defendant, having been first
10 duly sworn, was examined and testified as follows:

11 THE WITNESS: Yes, I do.

12 COURTRoom DEPUTY: Please state and spell your name
13 for rot record.

14 THE WITNESS: Paul, P-a-u-l, F. Roberts,
15 R-o-b-e-r-t-s, Jr.

16 COURTRoom DEPUTY: Thank you.

17 THE COURT: You may inquire.

18 MR. LICHTMAN: Thank you, Judge.

19 DIRECT EXAMINATION

20 BY MR. LICHTMAN:

21 Q Good morning, Agent Roberts.

22 A Good morning, sir.

23 Q I'm over here.

24 A There you are.

25 Q I was going to wave my arms.

Roberts - Direct/Mr. Lichtman

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1 A Okay.

2 Q You were one of the investigators on this case?

3 A Not on this case, no.

4 Q You investigated issues relating to Joaquin Guzman?

5 A No, I did not, sir.

6 Q What was your role in connection with the investigation
7 of the Sinaloa Cartel?

8 A I have no role in the investigation of the
9 Sinaloa Cartel, sir.

10 Q Did you take notes during the debriefing of any witnesses
11 that appeared in this case?

12 A Yes, I did.

13 Q And who was that?

14 A I spoke to two of the witnesses that were in this case.
15 Jorge Cifuentes and Alex Cifuentes.

16 Q You were involved in some capacity in this case you were
17 sitting on debriefing?

18 A Those interviews were not related to this case, sir.

19 Q But you interviewed witnesses that appeared, defendant
20 witnesses that appeared in this case; correct?

21 A That's correct, yes.

22 Q And you've been a special agent for how many years?

23 A Nearly 11, sir.

24 Q And you've gone through training as part of becoming a
25 special agent?

Roberts - Direct/Mr. Lichtman

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1 A That's correct.

2 Q And some of the training is in connection on how to
3 interview witnesses?

4 A Yes, sir.

5 Q You've taken classes?

6 A Yes, I have.

7 Q And that's in Quantico, Virginia?

8 A Yes, that's correct.

9 Q And how many classes about have you taken on this?

10 A I took classes at the academy. To be honest, I can't
11 remember how many sessions we had that were on interviewing at
12 this point.

13 Q Numerous?

14 A Numerous, yes.

15 Q And interviewing witnesses is an important tool in your
16 law enforcement techniques; correct?

17 A Absolutely, sir.

18 Q And it's important when you interview witnesses that
19 you're accurate and careful in what you write down?

20 A That's correct, sir.

21 Q And it's important because what you write down, first of
22 all, let me back up. You initially take your interview notes
23 with handwriting, in your own hand?

24 A Correct, sir.

25 Q You are not sitting at a computer typing up what someone

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1 is telling you?

2 A I can't type that fast, sir.

3 Q Of course. So you take what we would call rough notes of
4 your interviews?

5 A Yes.

6 Q And you listen carefully to what the witness says?

7 A Correct.

8 Q Because accuracy matters?

9 A That's correct.

10 Q And why does accuracy matter?

11 A Because you want to properly capture what the witness is
12 saying so that what they say can be reflected later.

13 Q And sometimes, you interview witnesses years and years
14 and years ago that your ultimate report will not come into
15 play until many years later?

16 A Correct.

17 MR. FELS: Objection, form, your Honor, leading of
18 the witness.

19 THE COURT: Well, I'm going to let him lead the
20 witness.

21 MR. LICHTMAN: Thank you, Judge.

22 Q So you've obviously interviewed countless witnesses over
23 the years?

24 A Yes, I have.

25 Q Would you say more than a hundred?

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1 A Yes.

2 Q And you've spent hundreds and hundreds of hours
3 interviewing witnesses over the years?

4 A Correct, sir.

5 Q And you would agree that interviewing witnesses is an
6 important part of your day-to-day job?

7 A As an agent it is yes, sir.

8 Q And when you are interviewing witnesses and writing your
9 notes down, you understand what they're ultimately for; right?

10 A Yes, sir.

11 Q It's ultimately for use by the Government at a trial?

12 A Correct, sir.

13 MR. FELS: Objection, your Honor.

14 THE COURT: I think we got that point, so move on to
15 something else.

16 Q In connection with your interviews of Alex and Jorge
17 Cifuentes, let me focus on Jorge Cifuentes if I can?

18 A Okay.

19 Q You recall that you interviewed him some time in February
20 of 2017?

21 A That sounds about right, sir.

22 Q So you were -- when did you become aware that you were
23 going to be testifying in this case?

24 A Yesterday afternoon.

25 Q And did you review any of your reports in connection?

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1 A I did, sir, yes.

2 Q And you read in preparation for your testimony what's
3 called an FBI-302 report?

4 A I read parts, yes, sir.

5 Q And the FBI-302 report is a typed-up version of your
6 notes?

7 A Yes.

8 Q So what you do is you take your rough notes, your
9 handwritten notes, and after you finished the interview soon
10 thereafter you sit at a computer and you type it up?

11 A Correct, sir.

12 Q And you're aware that these notes will be not only
13 provided to the Government but provided to defense counsel as
14 well?

15 A Yes, sir.

16 Q So accuracy is hugely important; correct?

17 A Yes, sir.

18 Q Now, as past your interview of Jorge Cifuentes, was this
19 your first time you were sitting in an interview with
20 Mr. Cifuentes?

21 A Yes, sir.

22 Q And your last time as well?

23 A Yes.

24 Q So you had no idea about anything in connection with the
25 Joaquin Guzman case?

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1 A Correct, sir.

2 Q You were just there as a mirror, basically, to write down
3 what you heard?

4 A No, sir. It was related to a different investigation.

5 Q But you were there to write down what you heard that day?

6 A Correct, sir.

7 Q And how long was that interview, if you recall?

8 A It was couple hours at least.

9 Q And if you had any questions during that interview where
10 you didn't understand something, you clarified it; correct?

11 A Yes, myself or the other people that were in the
12 interview room.

13 Q And there were many other people in this interview with
14 you?

15 A There were several, yes.

16 Q Agents?

17 A Correct.

18 Q Prosecutors?

19 A Correct, sir.

20 Q So everybody heard what you heard that day?

21 A Correct, sir.

22 Q And everybody had the opportunity, if you know, to make a
23 correction on what was said that day?

24 A During the course of the interview, yes.

25 Q And there was a translator that was there?

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1 A Yes, there was.

2 Q And Mr. Cifuentes, you asked him questions and he gave an
3 answer in Spanish?

4 A Myself and the other people in the room asked the
5 questions, yes.

6 Q Were you the sole person that was writing down the notes
7 from that interview?

8 A Yes, I was, sir.

9 Q Did anybody see those interview notes before they were
10 typed up?

11 A I don't believe they did, no, sir.

12 Q But everybody saw your completed FBI-302 report; correct?

13 MR. FELS: Objection, your Honor.

14 THE COURT: Sustained.

15 Q Now, during that interview, Mr. Cifuentes, described a
16 meeting to you where he received a visit from an American
17 lawyer?

18 A Yes, he did.

19 Q And you wrote that down?

20 A Yes, I did.

21 Q And you typed that up?

22 A I did, sir.

23 Q And then he said to you during the interview on
24 approximately October of 2010 he received a visit from a
25 representative of the U.S. Naval Intelligence; correct?

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1 A That's correct, sir.

2 Q That's what you heard?

3 A That's what is in my notes, sir.

4 Q Did that surprise you?

5 A At the time it did.

6 Q He said, in fact, that the naval intelligence officer
7 from the United States had a USB drive which contained much
8 evidence from the American and Colombian investigation of him?

9 MR. FELS: Objection, leading and it form.

10 THE COURT: The thing on this one, this kind of
11 question, you need to ask him open questions.

12 Q What did he tell you, the American naval officer, showed
13 him?

14 A I would have to look at the notes again. I believe it
15 was that he showed him a USB drive with some files on it
16 related to an investigation of him.

17 Q An American investigation of him; correct?

18 A Correct, sir, yes, sir.

19 Q And the files that he discussed were evidence that the
20 Americans had gathered against him and other people; correct?

21 A Evidence and charts detailing that evidence, I believe.

22 Q Evidence including tapes?

23 A As I sit here, I don't recall if there were tapes.

24 Q Let me if I can show you this is JMC-88.

25 If you can read that section to yourself and let me

Roberts - Direct/Mr. Lichtman

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1 know when you're done.

2 A The highlighted.

3 Q The whole last paragraph?

4 A Okay. Yes, there were recordings on the USB drive.

5 Q And the evidence that Mr. Cifuentes told you that the
6 United States naval intelligence officer showed him also dealt
7 with evidence against Mr. Guzman; correct?

8 A I would like to review my notes as well on that.

9 Q I helped you out a little bit there?

10 A Okay, yes, it did, sir.

11 Q So, in 2010, let's just recap. Mr. Cifuentes told you
12 that he received a visit from a U.S. naval officer who showed
13 him American-gathered evidence against the Cifuentes family
14 and Mr. Guzman?

15 MR. FELS: Objection, your Honor.

16 THE COURT: Sustained.

17 MR. LICHTMAN: Is that asked and answered, Judge?

18 THE COURT: No, it was form.

19 Q The evidence that Mr. Cifuentes told you that he was
20 shown by the U.S. Naval Intelligence officer was evidence,
21 American evidence, gathered against Mr. Guzman?

22 MR. FELS: Objection, your Honor.

23 THE COURT: Same problem. Don't lead him to that.

24 Ask him.

25 MR. LICHTMAN: Just leading, Judge.

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1 THE COURT: Okay.

2 Q Why don't you tell us what the evidence that
3 Mr. Cifuentes told you that the U.S. Naval Intelligence
4 officer showed you?

5 A It was evidence that he told us was from a
6 U.S. investigation of himself and Mr. Guzman.

7 Q And his family?

8 A And Mr. Cifuentes's family, yes.

9 Q And this was American-gathered evidence?

10 A I'm not sure if it was American-gathered, but it was from
11 the American investigation.

12 Q Okay. And as you said, this surprised you?

13 A It was a little surprising to hear, yes.

14 Q It was surprising because, in your mind, you believed, my
15 God, a U.S. Naval Intelligence officer is crooked and is
16 helping the Cifuenteses?

17 MR. FELS: Objection.

18 THE COURT: Sustained.

19 Q Why it did it surprise you?

20 A It surprised me that evidence of an ongoing investigation
21 would be shown to a defendant outside of, you know, something
22 more formalized or within the court process.

23 Q But what really surprised you was the fact that it was a
24 U.S. Naval Intelligence officer?

25 MR. FELS: Objection.

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1 THE COURT: Sustained.

2 Q Did the nationality of the officer surprise you?

3 MR. FELS: Objection, your Honor.

4 THE COURT: I'll allow it.

5 A It did as well, yes.

6 Q Of course it did because America isn't crooked; right?

7 MR. FELS: Objection, your Honor.

8 THE COURT: Mr. Lichtman, he's your witness.

9 MR. LICHTMAN: Well, Judge.

10 THE COURT: You called him.

11 MR. LICHTMAN: We can agree that he's not exactly a
12 friendly witness to us, Judge.

13 MR. FELS: Objection, your Honor.

14 THE COURT: It's an interesting question. I'm not a
15 hundred percent sure you're allowed to treat him as an adverse
16 party, but my inclination is, no, you can't argue with him.
17 So just get out the information you want to get out.

18 EXAMINATION BY

19 MR. LICHTMAN:

20 (Continuing.)

21 Q If Mr. Cifuentes told you that it was a Mexican or a
22 Colombian agent, would it have surprised you?

23 A It still would have surprised me for that person to have
24 the information.

25 Q I mean, the person who showed it to him?

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1 A Well, I feel that anyone who is working in an official
2 capacity sharing that information that would be surprising to
3 me that they would violate their duty.

4 Q The fact that it was American sort of heightened it?

5 MR. FELS: Objection, your Honor.

6 THE COURT: Sustained.

7 Q And after you received this information, did you ask him
8 again to clarify?

9 A I don't recall if I asked him to clarify on that point or
10 not, sir.

11 Q But you were careful of what you wrote down?

12 MR. FELS: Objection.

13 THE COURT: We have that already, Mr. Lichtman.

14 Q You made sure you were accurate?

15 MR. FELS: Objection.

16 Q With regard to this piece?

17 THE COURT: Did you have any particular degree of
18 accuracy with regard to this notation as opposed to any other
19 notation?

20 THE WITNESS: No, sir. I feel that the entirety of
21 it should be accurate.

22 Q So let's say that the color of a shirt that Mr. Cifuentes
23 claimed that the naval intelligence officer was wearing would
24 be the same as the nationality of him?

25 MR. FELS: Objection, your Honor.

Roberts - Cross/Mr. Fels

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1 THE COURT: I'll allow it.

2 THE WITNESS: I feel that all details in the
3 interview are equally as important. Whether it's a detail
4 that's captured, I'm taking the notes and making sure that
5 it's recorded appropriately.

6 Q If he would have told you that the man was wearing a
7 black shirt, would that have surprised you as much as the fact
8 that -- can I finish the question -- the fact that it was an
9 American naval intelligence officer that was crooked?

10 MR. FELS: Objection.

11 THE COURT: Sustained.

12 MR. LICHTMAN: No further questions.

13 THE COURT: Any cross.

14 MR. FELS: Yes, please.

15 CROSS-EXAMINATION

16 BY MR. FELS:

17 Q Special Agent Roberts, good morning.

18 A Good morning.

19 Q You and I have not met, have we?

20 A We've never met face-to-face, no.

21 Q We had a conversation yesterday?

22 A We did, yes.

23 Q Sir, now, you talked about these reporting requirements?

24 A Yes.

25 Q And taking notes and putting it into what's called a

Roberts - Cross/Mr. Feis

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1 FBI-302; correct?

2 A Correct, sir.

3 Q You don't go to the witness afterwards and say, sir, can
4 you take a look at this? Is this accurate? Did I get that
5 right.

6 You don't do that with the person you're
7 interviewing, do you?

8 A No, I do not.

9 Q And when you're taking these notes, you said on direct
10 that you're doing it through a Spanish interpreter; correct?

11 A In this interview I was, yes.

12 Q You don't speak Spanish, do you?

13 A I do not, sir.

14 Q So you're relying on the interpreter to get things
15 correct; is that right?

16 A Correct.

17 Q And if they get something wrong that could lead to an
18 issue with your notes, is that true?

19 A If they get something incorrect, then it's going to be
20 reflected incorrectly in my notes.

21 Q Has every report that you've written been perfect?

22 A Not perfect, no.

23 Q You make mistakes?

24 A I try not to, but.

25 Q And let's take the jury through this process.

Roberts - Cross/Mr. Fels

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1 You're asking a bunch of questions to a witness;
2 correct?

3 A Correct.

4 Q And this is not a witness you met before; correct?

5 A Correct.

6 Q Did you read any report, prior reports before the
7 meeting?

8 MR. LICHTMAN: Objection.

9 A I did not.

10 Q You didn't so you weren't aware --

11 MR. LICHTMAN: Objection.

12 Q -- that he actually talked into a prior debrief about his
13 side of the entire incident?

14 MR. LICHTMAN: Objection.

15 THE COURT: Stop. What's the objection?

16 MR. LICHTMAN: Beyond the scope.

17 MR. FELS: It goes --

18 THE COURT: It's not beyond the scope. Overruled.

19 Q You're aware, sir, that the same Jorge Cifuentes had
20 talked about this same incident only had --

21 MR. LICHTMAN: Objection.

22 Q -- told someone it was a Colombian agent. You were not
23 aware of that fact, were you?

24 MR. LICHTMAN: Objection.

25 THE COURT: Overruled.

Roberts - Cross/Mr. Feis

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1 A I was not, sir.

2 Q Because you hadn't read the prior report; correct?

3 A That's correct.

4 Q Had you read that prior report, might that have changed
5 how you perceived what he was telling you in this case?

6 MR. LICHTMAN: Objection, speculation.

7 THE COURT: Sustained.

8 Q Sir, I want -- we talked about this first paragraph that
9 we looked at, you said the first very thing you put down here
10 was he received a visit from an American lawyer. Do you
11 remember that?

12 A That's correct, sir.

13 Q And then, right from there, we go straight into this
14 meeting with a naval intelligence officer; correct?

15 A That was the next line, I believe, yes.

16 Q And then, later on, you weren't shown this part I want to
17 show you.

18 Do you remember that Mr. Cifuentes talked to you
19 about this naval officer's cousin and a relationship that
20 cousin had with one of his family members?

21 A I believe he did, yes.

22 Q And that family member was Francisco Cifuentes. Do you
23 remember that?

24 A It sounds correct.

25 Q Although you put down a/k/a Pacheto?

Roberts - Cross/Mr. Feis

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1 A If that's on there, then that's what I recall being said.

2 Q Okay. You are aware that he's consistently referred as
3 to Pacho or Pachito, not Pacheto?

4 A I am not aware of that.

5 Q And you are aware that he is a Colombian; correct?

6 MR. LICHTMAN: Objection.

7 THE COURT: Overruled.

8 A I believe he is.

9 Q Okay. So does it make sense that this law enforcement
10 officer, his cousin was a Colombian that he would be a
11 Colombian or an American?

12 MR. LICHTMAN: Objection.

13 THE COURT: Sustained.

14 Q Sir, you were asked a question about the United States
15 investigation. Do you remember that?

16 A Yes.

17 Q There's nothing in this report where you memorialized
18 that this witness said that what he said was from a
19 United States investigation; correct?

20 A I have to look at my notes again.

21 Q I'll show it to you.

22 Showing you what's been marked as Government's
23 Exhibit §3500-JMCV-1368 this is for the witness only.

24 A Okay. The rest of that paragraph doesn't say that it was
25 a U.S. investigation.

Roberts - Cross/Mr. Feis

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1 Q There was an assumption that you made based on your
2 perception that the witness talked about an American as
3 opposed to a Colombian investigator; correct?

4 MR. LICHTMAN: Objection.

5 THE COURT: Overruled.

6 A It was, yes, sir.

7 Q So if your assumption is based on whether or not the
8 intelligence officer was Colombian or American, and you got
9 that piece wrong, then there really was no American
10 investigation?

11 MR. LICHTMAN: Objection.

12 THE COURT: Sustained.

13 Q Sir, so we talked about the fact that the witness already
14 talked about an American lawyer, and that he talked about this
15 naval officer having Colombian cousins.

16 As you sit here today, do you have an independent
17 recollection of what Mr. Cifuentes said to you?

18 A I have no recollection beyond what was in my notes.

19 Q You don't have a court reporter who is there taking
20 down --

21 MR. LICHTMAN: Objection.

22 Q -- verbatim notes; correct?

23 MR. LICHTMAN: Objection.

24 THE COURT: Overruled.

25 A That's not how the FBI conducts interviews.

Roberts - Cross/Mr. Fels

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1 Q And you're not sure as you sit here today could have been
2 a mistake that Mr. Jorge Cifuentes said it was an American
3 naval officer instead of a Colombian isn't that right?

4 A Could you repeat that that question, sir.

5 Q As you sit here today, you're not sure whether or not
6 Jorge Cifuentes said an American versus a Colombian naval
7 officer?

8 A I know what was in my 302 and in my notes, and that is
9 the best recollection that I have.

10 Q It's possible that you made a mistake, isn't it?

11 MR. LICHTMAN: Objection.

12 THE COURT: Sustained.

13 Q Are you sure, with 100 percent confidence?

14 MR. LICHTMAN: Objection.

15 THE COURT: Sustained.

16 Q So if your recollection, since you have no independent
17 recollection, your recollection is based on your notes?

18 MR. LICHTMAN: Objection. Asked and answered.

19 THE COURT: We know that. We know that. Go on to
20 something else.

21 Q So you're not perfect; correct?

22 MR. LICHTMAN: Objection.

23 THE COURT: Sustained.

24 MR. FELS: I have no further questions.

25 THE COURT: Any redirect.

Roberts - Redirect/Mr. Lichtman

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1 MR. LICHTMAN: I do, Judge.

2 REDIRECT EXAMINATION

3 BY MR. LICHTMAN:

4 Q Special agent, you said that you weren't certain that
5 anything of this had to do with an American investigation;
6 correct, that you were told about by Mr. Cifuentes?

7 MR. LICHTMAN: That's a horrible question. I
8 withdraw that.

9 Q You said on cross, that you were not certain whether the
10 information that Mr. Cifuentes was discussing came from an
11 American investigation?

12 A Based on my notes, it came from an American
13 representative. But where the underlying source was, I don't
14 have a recollection of where that was from.

15 Q But you remember writing down in your report that, in
16 fact, this information made its way to the United States;
17 correct?

18 A Yes, if it came from a U.S. representative, then it would
19 have made its way to the United States.

20 Q And was used by the United States in connection with
21 their investigation?

22 MR. FELS: Objection, your Honor.

23 THE COURT: Sustained.

24 Q What would be the purpose of the United States receiving
25 that information?

Roberts - Redirect/Mr. Lichtman

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1 A In the course of an investigation.

2 Q Their investigation?

3 A Yes.

4 MR. FELS: Objection, your Honor.

5 THE COURT: Overruled.

6 Q Now, the prosecutor asked you about whether you showed
7 any of your notes to Mr. Cifuentes after you took them down;
8 correct?

9 A He did.

10 Q Could you have followed up with him if you had any
11 question with regard to accuracy?

12 A Through counsel I could have.

13 Q Could you have done it that day as well when he said it
14 to you initially?

15 MR. FELS: Objection, your Honor.

16 THE COURT: Overruled.

17 A During the course of the interview, we could have
18 clarified.

19 Q Did you clarify?

20 A I don't recall if we clarified on this point or not, sir.

21 Q Now, Mr. Fels asked you whether or not there was an
22 interpreter there which I asked you as well; correct?

23 A I believe you did, yes.

24 Q And do you think that made it more difficult for you to
25 understand what was being said to you because it came through

Roberts - Redirect/Mr. Lichtman

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1 an interpreter?

2 A I wouldn't say it was more difficult to understand, but
3 with an interpreter it does make the interview process a
4 little more complicated.

5 Q Well, but the interpreter speaks in English to you;
6 correct?

7 A Yes.

8 Q Are you aware that the words United States in Spanish are
9 Estados Unidos?

10 A I believe so, that's correct.

11 Q It's not very difficult to understand what United States
12 means in Spanish?

13 MR. FELS: Objection.

14 THE COURT: Sustained. It's for argument,
15 Mr. Lichtman.

16 MR. LICHTMAN: I understand.

17 Q Now, the Government asked you if there was a court
18 reporter present.

19 A Yes.

20 Q Do you need a court reporter when you're taking down
21 notes?

22 MR. FELS: Objection, your Honor.

23 THE COURT: Overruled.

24 A We do not, no.

25 Q Why don't you?

Roberts - Redirect/Mr. Lichtman

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1 A That's not FBI policy.

2 Q What's FBI policy?

3 A FBI policy is that there is one person taking notes, and
4 that person is the sole note-taker and then they draft a 302
5 based on those notes.

6 Q Do you think it would have helped if you had a court
7 reporter present?

8 A It would have meant that I wouldn't have had to write up
9 a long 302, but it would not have been in our policy.

10 Q Other than the ache of your hand you don't need a court
11 reporter, you're a professional.

12 MR. FELS: Objection.

13 THE COURT: Sustained.

14 Q You've written how many -- taken how many interviews over
15 the years?

16 MR. FELS: Objection. Asked and answered.

17 THE COURT: We've got that.

18 Q You're confident as you sit here today -- excuse me.

19 MR. LICHTMAN: Withdrawn.

20 Q You stand by the reports that you type up --

21 MR. FELS: Objection.

22 Q -- for the Government don't you?

23 MR. FELS: Objection.

24 THE COURT: No, I'll allow it.

25 THE WITNESS: I do, yes.

Roberts - Recross/Mr. Fels

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1 MR. LICHTMAN: Nothing further.

2 MR. FELS: I have a brief question. I can do it
3 from here.

4 RECROSS-EXAMINATION

5 BY MR. FELS:

6 Q Sir, are you aware of a process whereby Colombian
7 investigations information can be passed along to the
8 United States for prosecution here in the United States?

9 MR. LICHTMAN: Objection.

10 THE COURT: Overruled.

11 A I believe that there is a process. I'm not sure of the
12 actual treaties, I there know there are treaties that are in
13 effect.

14 Q Do you know what an MLAT is?

15 A Yes.

16 Q That's an opportunity the United States to obtain he
17 evidence from a foreign country for prosecution in the
18 United States?

19 A That's correct.

20 Q And --

21 MR. LICHTMAN: Objection.

22 THE COURT: Overruled.

23 Q As you sits here today, you don't know how it is that the
24 United States came to have that information; correct?

25 MR. LICHTMAN: Objection. Beyond the scope.

Roberts - Recross/Mr. Fels

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1 MR. FELS: Within the scope, your Honor.

2 THE COURT: It's barely within the scope but you got
3 to wrap it up.

4 MR. FELS: I'm going to wrap it up.

5 Q Sir, you understand what I'm asking?

6 A Could you repeat question.

7 Q As you sit here today, you have no idea one way or the
8 other whether the United States got the information on the
9 Cifuenteses from the Colombians, do you?

10 MR. LICHTMAN: Objection.

11 THE COURT: Sustained.

12 Q Sir, are you aware of how the United States got the
13 information on the Cifuenteses?

14 A I am not, sir.

15 MR. FELS: Okay. No further questions.

16 THE COURT: Okay. You may step down.

17 MR. LICHTMAN: Can I ask one last question.

18 THE COURT: Yes.

19 REDIRECT EXAMINATION

20 BY MR. LICHTMAN:

21 Q How do you know as you sit today the Americans got that
22 evidence; crosswalk?

23 MR. FELS: Objection, your Honor.

24 THE COURT: Sustained.

25 MR. LICHTMAN: Nothing further.

Proceedings

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1 THE COURT: You may step down.

2 THE WITNESS: Thank you, your Honor.

3 (Witness leaves the witness stand.)

4 THE COURT: All right. How would the defense like
5 to proceed?

6 MR. LICHTMAN: Judge, we have a stipulation to read
7 to the jury.

8 THE COURT: All right. Go ahead.

9 MR. LICHTMAN: This is Defense Exhibit 357.

10 It is hereby stipulated and agreed by between
11 Richard M. Donoghue, United States Attorney for the Eastern
12 District of New York, Arthur G. Wyatt Chief Narcotics and
13 Dangerous Drugs Section, and by Counsel Ariana Fajardo Orshan,
14 United States Attorney for the Southern District of Florida by
15 Assistant United States Attorneys Adam Fels, Andrea Goldbarg,
16 Gina Parlovecchio, and Michael Robotti and trial attorneys
17 Amanda Liskamm, Anthony Nardozzi, and Joaquin Guzman Loera by
18 Eduardo Balarezo, Jeffrey Lichtman, William Purpura and Paul
19 Townshend that if called to testify, Special Agent Patrick
20 Gittleson would testify that on April 26, 2017, he interviewed
21 Hildabrando Alexander Cifuentes Villa, and that during that
22 debriefing, Mr. Cifuentes Villa indicated that Alex Cifuentes
23 Villa first met Andres Granados, the attorneys who would
24 become his attorney, the individual, excuse me, who would
25 become his attorney.

Proceedings

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1 Mr. Cifuentes Villa was incarcerated in Mexico City.
2 He reached out to Mr. Granados after receiving a referral from
3 inmates Nariz, believed to be Mario Hidalgo Arguello and
4 Manuel Lopez Osorio, also known as Picudo.

5 And second, between 2007 and 2013, the defendant had
6 incurred, approximately, \$20 million worth of debt.

7 It is further stipulated that this stipulation may
8 be received and admitted as a Defense Exhibit at trial.

9 THE COURT: All right. It is in evidence.

10 (Defendant's Exhibit 357 was marked in evidence as
11 of this date.)

12 MR. LICHTMAN: Judge, with that, the defense rests.

13 THE COURT: Okay. Both sides having rested, ladies
14 and gentlemen, let me tell you what's going to happen with the
15 case now. I'm going to spend the rest of the day with the
16 attorneys going over the instructions that I'm going to give
17 you for your deliberations.

18 You'll come back tomorrow at 9:30 and we will start
19 closing arguments and then I will give you the final
20 instructions. I think the closing arguments and the
21 instructions will take somewhere between two and three days
22 before you even start deliberating.

23 I know Ms. Clarke inquired of you whether anyone had
24 any problems sitting this Friday because that's probably when
25 you'd start your deliberations and I know that a few of you

Proceedings

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1 have said that you do have problems. See what you can do
2 about that over the next day since you're going to have the
3 day off, I'm going to send you home now, and see if you can
4 resolve that day, you know, the deal was if that we don't sit
5 on Fridays but if everybody can then we will. I'd like to get
6 your deliberations under way, I'm sure I would, too, as soon
7 as possible but if we can't, we can't. But we'll get a final
8 answer to that question tomorrow after you got a chance to
9 consider it, see if you can move appointments, whatever you
10 have to do.

11 And that will be that. Once you start your
12 deliberations, you'll go until you have reached a verdict in
13 the case. So you have the day off today. Please remember
14 that you can't discuss this case with anyone especially at
15 this crucial stage of it you can't do any research on the
16 case. Don't look up anything on the Internet. Don't post
17 anything on Facebook. Stay away from any media coverage that
18 there might be of the case. We're getting to the end stage
19 and we will start with that end stage tomorrow morning at 9:30
20 for closing arguments.

21 Have a good evening we'll see you tomorrow.

22 (Jury exits courtroom at 10:11 a.m.)

23 THE COURT: Okay. Everyone be seated.

24 First, let's talk about scheduling and jury
25 availability. What Ms. Clarke was able to learn and, like I

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1 said, we will get a final run down tomorrow is that two
2 alternates and one seated juror have various conflicts on
3 Friday. Maybe they'll work them out, maybe they won't. If
4 they don't then I think we have no choice but to start
5 deliberations on Monday. I don't think that will affect the
6 schedule we laid out yesterday we'll do closings and charge
7 Wednesday and Thursday. And if I have to do part of the
8 charge on Monday, I will. So that's the story with that.

9 Is everybody ready for the charging conference, or
10 do you need a break.

11 MS. PARLOVECCCHIO: Your Honor, can we have a short
12 break?

13 THE COURT: Let's reconvene at 10:30 and we'll have
14 the charging conference.

15 MR. LICHTMAN: Judge, I'm going to take my leave
16 now.

17 THE COURT: Very good. Thank you, Mr. Lichtman.

18 (A recess in the proceedings was taken.)

19 (Defendant exits from courtroom at 10:13 a.m.)

20 (Continued on the next page.)

21

22

23

24

25

Charge Conference

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1 (In open court; outside the present of the jury.)

2 THE COURTROOM DEPUTY: All rise.

3 THE COURT: Okay. Have a seat, please.

4 All right. This is the charging conference. The
5 parties have been previously given a copy of the Court's
6 proposed charge. I have, of course, reviewed the proposals
7 that they have given me.

8 The way I would like to proceed, as is always the
9 case, the instruction, the proposed instructions are in
10 three parts. The first part is, I guess I can call it
11 "boilerplate." It's general principles. And so rather than
12 go through page by page as to that, and that is Pages 4
13 through 21, I just like to ask starting with the earliest of
14 those pages, does anyone have any comments, objections,
15 changes, or anything on that part?

16 MS. PARLOVECCHIO: Your Honor, just with regard to
17 Page 9, there's some language there where it states, "After
18 examining all of the evidence..." --

19 THE COURT: No, no. You are going to need to be a
20 little closer to the mic.

21 MS. PARLOVECCHIO: I'm sorry. I haven't improved
22 much over the last three months with my loudness.

23 "After examining all the evidence, you may decide
24 that the party calling the most witnesses has not persuaded
25 you because you do not believe its witness or because you do

Charge Conference

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1 believe the fewer witnesses called by the other side..."

2 THE COURT: Right.

3 MS. PARLOVECCHIO: We would just request some
4 language saying that, Other the other hand if you do find
5 that the party calling the most witnesses persuasive, then
6 you may decide in their favor, or something like that.

7 THE COURT: Right.

8 THE INTERPRETER: The interpreter cannot hear.
9 Use the microphone, please.

10 MS. PARLOVECCHIO: I'm sorry.

11 THE COURT: Do I have to give you a lapel mic?
12 (Pause in proceedings.)

13 MS. PARLOVECCHIO: How is that? Better?

14 THE COURT: Better.

15 MS. PARLOVECCHIO: Okay.

16 THE COURT: And I think it is also important that
17 you talk slow.

18 MS. PARLOVECCHIO: Yes, your Honor.

19 THE COURT: Okay.

20 So yes, we will add a sentence at the end of that
21 first incomplete paragraph on Page 9 that balances it out to
22 say what happens -- that you can still find in the
23 Government's favor if you find the appropriate predicate for
24 that.

25 MS. PARLOVECCHIO: Thank you.

Charge Conference

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1 THE COURT: Okay.

2 Okay. Anything before Page 9?

3 MS. PARLOVECCHIO: No.

4 THE COURT: Anything from 9 to 21?

5 MS. PARLOVECCHIO: No -- well, actually -- I'm
6 sorry. Just one thing. On Page 10 I noticed you have some
7 language in regards to judicial notice?

8 THE COURT: Yes, we do not need that.

9 MS. PARLOVECCHIO: We don't need it.

10 THE COURT: Okay. We will take that out. Thank
11 you for catching that.

12 MS. PARLOVECCHIO: Sure.

13 THE COURT: Okay. And nothing else before
14 Page 22; is that right?

15 MS. PARLOVECCHIO: Oh, your Honor?

16 THE COURT: Yes.

17 MS. PARLOVECCHIO: On Page 18 --

18 THE COURT: Right.

19 MS. PARLOVECCHIO: -- Section F, Government
20 Informants, there actually weren't any government informants
21 who testified during trial.

22 THE COURT: No.

23 MS. PARLOVECCHIO: I think this may have been
24 included in regard to the witness Christian Rodriguez.
25 However, he was testifying pursuant to a nonprof agreement,

Charge Conference

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1 a non-prosecution agreement; so therefore, I think he would
2 be encompassed in the cooperating witness's section of the
3 instructions.

4 THE COURT: Okay.

5 All right. Is there any issue with that from the
6 defense?

7 MR. BALAREZO: No, your Honor.

8 THE COURT: All right. So we will take out that
9 Subparagraph F on Page 18 -- well, two photographs,
10 actually, under F.

11 MR. BALAREZO: And, your Honor, with respect to
12 that witness also, although he was testifying pursuant to a
13 non-prosecution agreement, it's in effect an immunity
14 agreement and we have requested an instructions on witnesses
15 with immunity, and I don't think that was included --

16 MS. PARLOVECCHIO: Well, I --

17 MR. BALAREZO: -- because there is no
18 non-prosecution instruction, for example, and he has been
19 immunized for his testimony. He's not being prosecuted for
20 it.

21 MS. PARLOVECCHIO: Your Honor, the character of
22 those two types of agreements are sufficient different that
23 I don't think an immunity instruction would be appropriate
24 there.

25 THE COURT: Yes. I didn't think your instruction

Charge Conference

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1 fit for the reason you are saying. It is really applied to
2 a difference situation. But I did think that the
3 cooperating witness instruction picked up all of the things
4 that you need to for Rodriguez. So I think you are in the
5 same boat. If you can think of any additional language
6 which would in an abstract way address the very slight
7 differences between him and the other cooperators, you can
8 try that, but I do not think it is necessary.

9 MR. BALAREZO: I'm just going through it again,
10 your Honor. I would probably just, if it's not in, add
11 something along the lines of, A witness has -- well, The
12 Government has agreed not to prosecute a witness who has
13 admitted to committing crimes and that witness has testified
14 pursuant to that agreement and will not be prosecuted.
15 Something along those lines.

16 THE COURT: Well, maybe we can put in a sentence
17 that simply refers to that status and says they should be
18 treated the same way as a cooperating witness.

19 MR. BALAREZO: That's fine.

20 MS. PARLOVECCHIO: Your Honor, I think maybe the
21 paragraph that begins on Page 20 in the Cooperating Witness
22 Section, the sentence that says, "There is also evidence
23 that the Government agreed to dismiss some charges against
24 those witnesses, and agree not to prosecute them..."

25 MR. BALAREZO: But where are you? I'm sorry.

Charge Conference

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1 MS. PARLOVECCHIO: I'm sorry. It's the second
2 sentence in the first full paragraph on Page 20.

3 MR. BALAREZO: Okay. Thank you.

4 MS. PARLOVECCHIO: Sure.

5 THE COURT: It's there. You are right.

6 MS. PARLOVECCHIO: I think that should cover it.

7 THE COURT: Well, that covers you, Mr. Balarezo,
8 right?

9 MR. BALAREZO: Well, not to be nitpicky, but the
10 Government did not dismiss the charges against our witness.
11 It just agreed not to prosecute them, and this witness did
12 not plead guilty. I mean, this kind of convolutes many
13 things, but his witness was never charged, was never
14 prosecuted, never pled guilty. He was just -- nothing
15 happened, basically.

16 MS. PARLOVECCHIO: What if we said "or" instead of
17 "and"?

18 THE COURT: Yes, "or" agreed not to prosecute."

19 MR. BALAREZO: "And/or agreed"?

20 THE COURT: No. Take out "and" and put in "or"
21 because then you are covering both.

22 MR. BALAREZO: But then in exchange for the
23 witness's agreement to plead guilty, that's not factually
24 accurate with respect to Rodriguez.

25 THE COURT: Well, then how about this: Leaving --

Charge Conference

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1 MS. PARLOVECCHIO: Or testify?

2 THE COURT: No. Leave in "and." Leave the
3 sentence as is, and then at the end of that sentence, add
4 "or agreed to testify."

5 MS. PARLOVECCHIO: Uh-huh.

6 THE COURT: What about that?

7 MS. PARLOVECCHIO: That would address our
8 concerns, your Honor.

9 MR. BALAREZO: So "agreed to plead guilty and
10 testify against the defendant"?

11 THE COURT: "Or agreed to testify" -- "or
12 otherwise agreed to testify."

13 MR. BALAREZO: Would the Court accepted adding
14 that witness's name? Because often in other trials that
15 I've had where there's specific situations about one
16 witness, the witness is identified. For example, Christian
17 Rodriguez has testified --

18 THE COURT: We are going to get more into that
19 general question as we go through the substantive part of
20 the instruction. But I would like to avoid that, if I can.
21 I do not want to draw any Court attention to the parties'
22 arguments. I think if we have the language I just
23 suggested, nothing stops you from pointing to that language
24 in closing and saying, And that means Christian Rodriguez,
25 and you can argue that.

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1 MR. BALAREZO: Okay.

2 THE COURT: I think that is the way I want to do
3 it.

4 MR. BALAREZO: That's fine, your Honor. Thank
5 you.

6 THE COURT: Hang on one second.

7 (Pause in proceedings.)

8 THE COURT: Yes. That first "and" should be an
9 "or" -- was changed to an "or."

10 MR. BALAREZO: The third line down?

11 THE COURT: Yes, the third line down. Correct.

12 But by then I think we have covered the waterfront.

13 Okay. Anything else before Page 22?

14 MS. PARLOVECCHIO: Yes, your Honor. In that same
15 paragraph on Page 20, the Government would request to strike
16 the language beginning, "A witness who has entered into such
17 an agreement has an interest in this case different than any
18 ordinary witness. If I realize that they may be able to
19 obtain their own freedom or receive a lighter sentence by
20 giving testimony favorable to the prosecution, they have a
21 motive to testify falsely."

22 And we just have some alternative language.

23 THE COURT: Go ahead.

24 MS. PARLOVECCHIO: Okay. Well, actually, we
25 would -- we would actually request to strike that, that

Charge Conference

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1 language from the paragraph.

2 THE COURT: Well, you are just talking about that
3 once sentence?

4 MS. PARLOVECCHIO: Uh-huh, yes.

5 MR. BALAREZO: We object, obviously, to that. I
6 think that's a standard instruction with respect to that,
7 so...

8 THE COURT: I do not think that is standard.

9 MS. PARLOVECCHIO: No, it's not.

10 THE COURT: The next sentence about "examining
11 testimony with caution and weigh it with great care," that
12 is standard.

13 MS. PARLOVECCHIO: Right.

14 THE COURT: And I think that is enough. I think
15 that's enough.

16 All right. I am going to grant the Government's
17 request over objection and take out the preceding sentence.
18 That is really more argument it seems to me.

19 Okay. Is there anything else on 20 or 21?

20 MS. PARLOVECCHIO: On Page 21, your Honor, in
21 Section I, Sentencing Cooperating Witness.

22 THE COURT: Right.

23 MS. PARLOVECCHIO: Just two brief issues: One is
24 the sentence that says, "what the Government will do if it
25 is satisfied with the level of cooperation," just instead of

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1 the words, "level of cooperation," we would suggest some
2 alternative language because that's not really the language
3 that tracks the cooperation agreement at issue in this case.

4 THE COURT: How about "the witness's cooperation"?

5 MS. PARLOVECCHIO: That's fine with us, your
6 Honor.

7 THE COURT: "Would be satisfied with the witness's
8 cooperation."

9 MS. PARLOVECCHIO: And alternatively -- I think
10 that would suffice, your Honor, but we had also suggested
11 some language in our proposed charge that would say, If the
12 witness has provided substantial assistance to the
13 Government and testified, truthfully, completely, and fully,
14 it tracks that -- it actually tracks the cooperation
15 agreement.

16 THE COURT: Well, you know, then we --

17 MR. BALAREZO: We object, your Honor.

18 THE COURT: Right.

19 We get into the notion of it being the Government
20 that determines the truthfulness of it, which is, of course,
21 the case. But the bottom line is the Government is
22 satisfied or not. So I am going to -- I think that gives
23 the jury everything they need to know about that. I am
24 going to change the word I said, take out "level of" and
25 insert "witness's," but otherwise, I am going to leave it

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1 the same.

2 MS. PARLOVECCHIO: Okay. Thank you, your Honor.

3 And then just finally in that section, your Honor,
4 makes reference to the 5K1 letter. We do have a few
5 witnesses who have already been sentenced in this case, and
6 term "Rule 35" has introduced on direct and cross, and we
7 would just ask that there be a reference to Rule 35 in this
8 last paragraph.

9 THE COURT: Well, you are saying add really a new
10 paragraph to the bottom?

11 MS. PARLOVECCHIO: Yes. And we have some
12 suggestions from our requested charge if that would assist
13 the Court.

14 THE COURT: All right. Have you given that to us
15 already?

16 MS. PARLOVECCHIO: Yes.

17 THE COURT: Okay.

18 MS. PARLOVECCHIO: It is actually at the bottom of
19 Page 59 of the Government's Government requested charge.
20 And it begins, "Similarly, you may have heard testimony
21 about a Rule 35," and then explains what that is. It's just
22 basically one sentence.

23 MR. BALAREZO: Your Honor, can we just keep it
24 simple and just add Rule 35 to the 5k1? I mean, it's
25 basically the same thing, presentence and postsentence.

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1 THE COURT: It's really -- we can keep it simple
2 and inaccurate as a technical matter and you are probably
3 right, the jury would not know that it is technically
4 inaccurate. But I think by adding that one paragraph that
5 the Government has offered, we are not making it unduly
6 lengthy and we have accurately stated the law. So I am
7 going to add that paragraph at the bottom. That is the
8 paragraph that starts at the bottom of Government Proposal
9 59 and continues over to the next page; just that paragraph,
10 not the last sentence of that.

11 MS. PARLOVECCHIO: Yes.

12 MR. BALAREZO: Your Honor, I do have one addition.
13 Page 16 on Discrepancies in Testimony --

14 THE COURT: Hang on. Hang on.

15 Before you get there, let me just make sure we
16 have closed the loop on this one.

17 MR. BALAREZO: Sure, sure.

18 THE COURT: Okay. So that will go -- that
19 paragraph from 59 of the Government's proposal, will go at
20 the bottom of Page 21 to the end of Section I Sentencing
21 Cooperating Witnesses.

22 Okay. And you wanted to go back, Mr. Balarezo?

23 MR. BALAREZO: Yes, your Honor.

24 THE COURT: No going back.

25 MR. BALAREZO: No?

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1 THE COURT: What do you have?

2 MR. BALAREZO: Too late now, huh?

3 Page 16, Discrepancies of Testimony/Prior
4 Inconsistent Statement.

5 THE COURT: Yes.

6 MR. BALAREZO: I do believe that one or two
7 witnesses were impeached with prior statements under oath,
8 which should be admissible as substantive evidence and I
9 think there should be some mention of that somewhere in
10 here, rather than they were just impeached by inconsistent
11 statements or discrepancies in testimony.

12 THE COURT: Say it again, I am not seeing your
13 point. What is --

14 MR. BALAREZO: Well, if there were -- they are
15 impeached either by the inconsistent statements from prior
16 proffer sessions, that was lot of the testimony. But there
17 were some witnesses who were also impeached, I believe, with
18 the transcripts of their testimony at trial or there was
19 some other sworn statement also that was used. And at least
20 my understanding of the rules is that when they're impeached
21 as a prior inconsistent statement under oath, that is
22 substantive evidence we can perhaps, for example, introduce
23 a page of the transcript where that --

24 THE COURT: Well, I have several questions about
25 the point you just made.

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1 First of all, what did you introduce, not what can
2 you introduce because whatever --

3 MR. BALAREZO: Well, I recall at least -- and I'll
4 check which one introducing the transcripts -- well, the
5 entire transcript was in, but we impeached them with certain
6 parts of the transcript. And what I would seek to introduce
7 and go back to the jury is the part that they were impeached
8 with, obviously, not the entire transcript.

9 MS. PARLOVECCHIO: The transcript from this trial
10 or different proceedings?

11 MR. BALAREZO: I believe there was one that was a
12 transcript from his prior --

13 THE COURT: One, yes.

14 MR. BALAREZO: -- from direct, for example. And
15 then there was another statement that was made under oath.
16 I don't recall if it was an affidavit or --

17 THE COURT: I, frankly, do not recall if you
18 introduced those into evidence. I know you read them.

19 MR. BALAREZO: Well, if the Court would allow me,
20 I would introduce them now. I know the evidence is closed,
21 but I mean, we're -- or I believe you would.

22 THE COURT: I would let you do it. That is fine.

23 But in terms of what it means for this
24 instruction -- well, first of all, the other point we have
25 to realize is, as we have said throughout the trial, the

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1 302's are not the witness's statements.

2 MR. BALAREZO: Right.

3 THE COURT: So that is not what we are talking
4 about impeaching them with, Some of them said I said that.
5 There is no impeachment.

6 MR. BALAREZO: Right.

7 THE COURT: Some of them said I didn't say that,
8 and then there's still no impeachment because it is not
9 their statement.

10 MR. BALAREZO: Right.

11 THE COURT: So that is not what this is applying
12 to.

13 This is testimony -- isn't the word "testimony"
14 big enough to pick up testimony in prior trials, assuming I
15 reopen the record like you have asked me to and admit those?

16 MR. PURPURA: Your Honor, there are admissions.

17 One's Defense Exhibit 165 and 165B are transcripts which you
18 admitted with prior inconsistent statements.

19 THE COURT: Okay. But isn't the word -- the
20 discrepancy is any testimony big enough to pick that up?
21 That is testimony.

22 MS. PARLOVECCHIO: And, your Honor, there's
23 actually in the second sentence of Subsection B, as in
24 "boy," you already have here, "You have also heard evidence
25 that a witness has made a statement on an earlier

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1 occasion..." which I think would encompass, you know, any
2 foreign testimony or statements on an earlier occasion.

3 THE COURT: I think it is covered.

4 MR. BALAREZO: I'm sorry. I'm having problems
5 hearing you from -- you're facing --

6 THE COURT: Well, you have got to talk slower. It
7 is a speed thing at this point.

8 What she is saying is look at the second sentence
9 in that Subsection B.

10 MS. PARLOVECCHIO: Where the Court says, "The
11 witness has made a statement on an earlier occasion that
12 counsel argues is inconsistent..." we would argue that the
13 phrase "statement on an earlier occasion" would encompass
14 any prior testimony or a prior source statement.

15 MR. BALAREZO: That's fine, your Honor. We don't
16 need --

17 THE COURT: That's fine then.

18 Okay. Anything else before Page 22?

19 Okay. Now, as to the substantive instructions, I
20 am going to go through them one page at a time and I will
21 give you, you know, five, ten seconds to tell me if you have
22 got anything on that page. You do not need to feel you have
23 to say, Yes, I do or No, I don't. If you have a, Yes, I do,
24 I need to hear that. But if you don't have anything, just
25 do not say anything and I will move on.

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1 All right. So anything on 22?

2 MS. PARLOVECCHIO: Just briefly, your Honor. We
3 have this issue with renumbering the indictment to
4 reflect --

5 THE COURT: We sure do. I am completely confused,
6 but we have to get it right.

7 MS. PARLOVECCHIO: Okay. So one suggestion we
8 had, your Honor, due to the fact that we have some
9 violations that were included in a bill of particulars
10 rather than the indictment itself is not sending the
11 indictment back to the jury on this occasion because the
12 instructions do track the indictment. Also they'll have the
13 special verdict form which includes all of the dates, the
14 amounts of the charge violations and track some of the
15 language in the indictment as far as the grouping that were
16 included in the indictment.

17 And just for purposes of not completely confusing
18 the jury, the Government would suggest just letting them
19 have the jury charge and the special verdict form which will
20 give them everything they need to follow the evidence and
21 the charges.

22 THE COURT: I think that is a lot easier than
23 trying to renumber the indictment and trying to get it to
24 correspond. Okay.

25 MR. BALAREZO: Unless the indictment's going to go

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1 back with the caption of all the defendants on it.

2 THE COURT: Yeah. We are not going to have that
3 either.

4 MR. BALAREZO: All right.

5 THE COURT: Good try, though.

6 MR. BALAREZO: Okay.

7 THE COURT: Okay.

8 MS. PARLOVECCHIO: So I would just suggest then
9 striking that last sentence of the second paragraph of
10 Subsection Part 2(i) or Part 2(1).

11 THE COURT: Hang on a second. Now you have lost
12 me.

13 MS. PARLOVECCHIO: I'm sorry.

14 THE COURT: We are on Page 22?

15 MS. PARLOVECCHIO: Page 22, the second full
16 paragraph, the last sentence where it says, "I'm permitting
17 you to have the indictment..."

18 THE COURT: Yes, correct. Okay.

19 But we still keep in the summary in the next
20 paragraph?

21 MS. PARLOVECCHIO: Yes.

22 THE COURT: Okay.

23 Okay. Anything else on 22?

24 MS. PARLOVECCHIO: No.

25 THE COURT: 23?

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1 24?

2 25?

3 26?

4 27?

5 And then we have 28 where I have got a change over
6 the version you have. This is based on the letter I
7 received from the defense last night which they asked for a
8 multiple conspiracy charge. I really do not think I have to
9 give that charge. I think the Government has put in
10 sufficient evidence where the single proof of the conspiracy
11 the way it has charged it. Nevertheless, I appreciate that
12 there is some argument that the defense has that -- some
13 other conspiracy.

14 What I proposed to do is this: I am going to add
15 three sentences as a paragraph below the first full
16 paragraph on Page 28, and that paragraph is essentially the
17 multiple conspiracy charge. It is a lot shorter than the
18 defense requested, but I think it does as much as required
19 for this case. It would provide as follows: "Ultimately,
20 the Government must prove beyond a reasonable doubt that the
21 defendant was a member of the conspiracy charged. If you
22 find that the defendant was not a member of the charged
23 conspiracy, you must find the defendant not guilty of that
24 count even if you find that he was a member of some other
25 conspiracy. Proof that the defendant was a member of some

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1 other conspiracy is not enough to convict."

2 I think that is the essence of what you were
3 looking for.

4 MR. PURPURA: It is, your Honor.

5 THE COURT: And I think that is a correct
6 statement of law and there is enough in the record to
7 justify it.

8 Do you need me to read it again?

9 MS. PARLOVECCHIO: Yes, please, your Honor.

10 THE COURT: Okay. Again, this would go under the
11 first full paragraph on Page 28 as a separate paragraph. It
12 would say: "Ultimately, the Government must prove beyond a
13 reasonable doubt that the defendant was a member of the
14 conspiracy charged. If you find that the defendant was not
15 a member of the charged conspiracy, you must find the
16 defendant not guilty of that count, even if you find that he
17 was a member of some other conspiracy. Proof that the
18 defendant was a member of some other conspiracy is not
19 enough to convict."

20 I know you are not crazy about it, but I think it
21 is right.

22 MS. PARLOVECCHIO: So, your Honor, I mean just for
23 the record we object to its inclusion as a general matter.
24 But to the extent the Court is going to include that
25 language, we would also include --

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1 THE COURT: I am just interested in why you think
2 I should not include that language. Is it your view that
3 once you show a *prima facia* case as to the charged
4 conspiracy, there cannot be a multiple conspiracy charge?

5 MS. PARLOVECCHIO: I just don't think there's a
6 factual basis for a multiple conspiracy charge in this case.
7 And I don't think the defense has proffered one, and for the
8 reasons stated in our submission.

9 But in any event, should the Court include such an
10 instruction, which as I stated, I don't think is
11 ^ wanted ^ warranted here given the fact that we've shown
12 over the course of the trial throughout abundant evidence
13 that the defendant has been of the crux of the charged
14 conspiracy for a 25-year period. Should the Court include
15 such an instruction, we would just request language from
16 *United States v. Payne* in the Second Circuit.

17 THE COURT: Can you read the language?

18 MS. PARLOVECCHIO: Yes. My Post-It was at the
19 wrong place.

20 So the language we would propose is --

21 THE COURT: Slowly.

22 MS. PARLOVECCHIO: Yes. And I can provide a copy
23 to the court reporter as well when we're finished here. "In
24 addition, even if you find that multiple conspiracies
25 existed, you should convict the defendant if you find that

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1 one of the conspiracies was the one alleged in the
2 indictment and that the defendant was a member of it."

3 THE COURT: That's fair. That's fair. And I
4 agree with you, the way I wrote it could mislead the jury
5 into thinking that if they find him a member of some other
6 conspiracy they have to acquit, even if they also find he
7 was a member of the charged conspiracy.

8 So we will add a sentence to that effect at the
9 end of that proposed paragraph.

10 Okay. Anything else on 28?

11 Like me ask a practical question. I have never
12 seen this done, but do we really have to put venue to the
13 jury? Aren't the defendants prepared to stipulate on venue?

14 MR. BALAREZO: Well, we didn't --

15 MR. PURPURA: We didn't stipulate, but, obviously,
16 the Government proved venue.

17 THE COURT: Right. I mean, the cross-examination
18 was not on the venue point.

19 MR. PURPURA: It's not at issue.

20 THE COURT: Can I direct the jury to find venue or
21 does that violate his jury trial rights?

22 MS. PARLOVECCHIO: I actually don't think you can
23 direct them, your Honor.

24 THE COURT: It seems so silly.

25 MS. PARLOVECCHIO: I know.

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1 THE COURT: If I were a juror I would be thinking,
2 Why are they doing this?

3 MS. PARLOVECCHIO: Absolutely.

4 THE COURT: Is there more to this than what
5 appears to be the case?

6 MS. PARLOVECCHIO: Right.

7 THE COURT: All right. We will do it the
8 old-fashioned way and leave it in.

9 Okay. Anything on 29?
10 30?

11 (Pause in proceedings.)

12 THE COURT: All right. I wanted to ask the
13 Government on Count 2, do we have to get into manufacturing?
14 I am not sure we have got manufacturing. We have got
15 distributing.

16 MS. PARLOVECCHIO: We did have evidence of
17 manufacturing, your Honor, in regards to methamphetamine.

18 THE COURT: Oh, that is true. Okay. We will
19 leave it. Okay.

20 MS. PARLOVECCHIO: In regard to heroin as well.

21 THE COURT: Anything on 30?

22 31?

23 32?

24 33?

25 34?

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1 35?

2 36?

3 37?

4 38?

5 39?

6 40?

7 MR. BALAREZO: For the record, I'll object to
8 the --

9 THE COURT: Yes. The defendants always object,
10 but you know, the law is the law. It is an available theory
11 to the prosecution.

12 MR. BALAREZO: You heard the sigh.

13 THE COURT: Yes.

14 All right. 41?

15 42?

16 MS. PARLOVECCHIO: Just a very small thing on
17 Page 42, your Honor. In the second sentence of the first
18 paragraph where it states, "This is a lengthy and
19 complicated instruction . . .," we would just request to strike
20 "and complicated" simply because, you know, we don't want to
21 put it in the minds of the jury that it's going to be
22 something that's difficult. I think actually while the
23 elements are indeed lengthy, they're pretty easy concepts,
24 and we don't want to put in the minds of the jury that they
25 should think this is overcomplicated.

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1 THE COURT: Well, frankly, I think it is also
2 wrong, because I am not sure it is more complicated than
3 some of the other instructions.

4 MS. PARLOVECCHIO: I agree.

5 THE COURT: So yes, I will take out "and
6 complicated."

7 I should mention to you all just so you are not
8 surprised, my practice is when we get to this Part 2, the
9 substantive instruction, I display it on the overhead screen
10 as I am reading it so the jury can follow along. I think it
11 kind of helps them focus on the words rather than just
12 hearing the words.

13 Okay. Anything else on 42?

14 MR. BALAREZO: Does the jury get a copy of the --

15 THE COURT: They do. They do.

16 MR. PURPURA: Is it your practice not to tell them
17 before you speak or after, at the end?

18 THE COURT: Well, I tell them they are going get a
19 copy.

20 MR. PURPURA: All right.

21 THE COURT: You know, I don't think they tune out
22 just because they know they are going to get it a copy.

23 And, frankly, I have to tell you, this jury, with
24 a couple of exceptions, they were really focused on the
25 case. So I think they will focus on the instructions, too.

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1 Okay. Is there anything on 43?

2 44?

3 MS. PARLOVECCHIO: Your Honor, just for the
4 record, we have provided some -- there were discrepancies in
5 the numbering, and we provided some clarification last
6 night.

7 THE COURT: Yes. Those are not incorporated in
8 here yet.

9 MS. PARLOVECCHIO: Okay.

10 THE COURT: Let me ask you another question,
11 though.

12 MS. PARLOVECCHIO: Sure.

13 THE COURT: I wonder if we could take all of this
14 out -- probably not. But my thinking is to take it all out,
15 the numbered charges and put it in the verdict sheet.

16 MS. PARLOVECCHIO: It actually is in the verdict
17 sheet.

18 THE COURT: So if it is there, can't I just refer
19 to it generally and tell them it is in the verdict sheet?
20 It is just -- you know, if they are going to lose focus on
21 anything, you give them a laundry list with this many items
22 in it, and, you know, by the time I get down to Violation 16
23 if I turn to turn to them and say, What was Violation 8, no
24 one i s going to know, right?

25 MS. PARLOVECCHIO: I mean, my suggestion, just for

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1 clarity's sake, if they're cross-referencing from the
2 charges to the verdict sheet --

3 THE COURT: Yes.

4 MS. PARLOVECCHIO: -- is to keep it in both
5 places. I think the verdict sheet lays it out very clearly.

6 Maybe your Honor could just say, I'm not going to
7 read to you every single one of these while I'm charging
8 you --

9 THE COURT: Right.

10 MS. PARLOVECCHIO: -- but it's in here and you
11 also have it in the verdict form.

12 THE COURT: I explain it on the screen so they
13 will be looking at it. And I will say to them, Rather than
14 read to you ^ allowed ^ aloud each one of those items, each
15 one of them is going to be here in the charge as you are
16 going to see it, and it also is in the verdict form so you
17 can decide as to each one. Okay? That will at least save
18 some vocal strain.

19 MS. PARLOVECCHIO: Yes.

20 THE COURT: Okay. Anything on 44?

21 45?

22 46?

23 MS. PARLOVECCHIO: Oh, on 46 --

24 THE COURT: Yes.

25 MS. PARLOVECCHIO: -- never mind, your Honor.

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1 THE COURT: Okay. Now, on 47 there's a
2 fill-in-the-blank. You can see about two-thirds down the
3 page.

4 MS. PARLOVECCHIO: Yes. We provided the names of
5 the intended victims of the murder conspiracies to the Court
6 last night.

7 THE COURT: Right. Now, that is another list that
8 I think is likely to get lost in the jury instructions. If
9 that is not in the verdict form, that might be a better
10 place for that list.

11 MS. PARLOVECCHIO: It's not in the verdict form
12 currently, your Honor.

13 They actually don't have to render a verdict on
14 each individual. As long as they find one --

15 THE COURT: Right. I mean, well, we would explain
16 that in the verdict form. The list when I read it down of
17 all these names and categories, it is like gone as soon as I
18 reads it.

19 MS. PARLOVECCHIO: I mean, I would just suggest to
20 your Honor that you could do the same thing there. You can
21 say, There's a list of names here. I'm not going to read
22 them all to you, but they're here for your reference.

23 THE COURT: Yeah. But they are because they won't
24 remember. They're going to have to go back to this
25 instruction --

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1 MS. PARLOVECCHIO: Correct.

2 THE COURT: -- to match it up and make a decision
3 as to at least one.

4 MS. PARLOVECCHIO: Correct.

5 THE COURT: Okay. And their decision as to that
6 one has to be unanimous.

7 MS. PARLOVECCHIO: Right.

8 THE COURT: We tell them that.

9 MS. PARLOVECCHIO: Yes. Actually, it's --

10 THE COURT: All right. I cannot think of a better
11 way to do it.

12 (Continued on the next page.)

13

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Charge Conference

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1 (In open court; jury not present.)

2 THE COURT: All right. Anything on 48?

3 MR. BALAREZO: Your Honor, just one thing about that
4 list of the alleged victims. You got it late last night. We
5 were actually -- I don't think we focused on it. We will
6 review it as soon as possible just to make sure that we don't
7 have any objections to names because I don't --

8 THE COURT: Okay. The charging conference will stay
9 open for the limited purpose of giving you a chance to weigh
10 in on the list.

11 MR. BALAREZO: Okay.

12 MS. PARLOVECCHIO: Just to clarify, your Honor, on
13 the murder conspiracies violation, I misspoke. There actually
14 is not a unanimity requirement. Okay. Sorry.

15 THE COURT: There is, right?

16 MS. PARLOVECCHIO: There is.

17 THE COURT: Right.

18 MS. PARLOVECCHIO: I've gotten turned around myself.
19 So there is a unanimity requirement. It just has
20 not been referenced in this discussion.

21 THE COURT: Oh. Well, it's got to be. I mean,
22 isn't this the place where we should tell them they have to
23 find at least one, and if they find one, it has to be
24 unanimous?

25 MS. PARLOVECCHIO: Yes.

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1 THE COURT: And this instruction doesn't do that?
2 Do we do it someplace else?

3 MS. PARLOVECCHIO: No. I think we say we -- the
4 charge says they have to be unanimous as to the violations --
5 the three violations. Three or more, rather. I don't think
6 it specifically references the murder conspiracy violation.

7 THE COURT: Okay. Well, we've got to add that.

8 MS. PARLOVECCHIO: Yes.

9 THE COURT: That's what got me thinking that it was
10 more appropriate for the verdict form because it almost calls
11 for one of those shorthand instructions on the verdict form
12 that says, you know, "Consider these. If you find one
13 unanimously, you may stop," which is all they would have to
14 do.

15 MS. PARLOVECCHIO: Right.

16 MR. BALAREZO: Your Honor, with respect to the
17 unanimity issue, when I read it, when I read the proposed
18 instructions, I think there were several places where I would
19 have added "unanimously," or something like that, but perhaps
20 if we can just give them one instruction that you have to
21 consider each count separately, each one has to be -- I mean,
22 make it very clear that --

23 THE COURT: That's in here. That's already in here
24 in a couple places. We are talking about something different
25 now. We are talking about these 27 charged violations, and

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1 they have to find only one of those, but they have to find it
2 unanimously, and that we haven't told them, so the place to do
3 it is here, and I will just find some language to put it in
4 there.

5 MS. PARLOVECCHIO: If the Court would allow us to,
6 we could submit some suggested language at the end of the
7 charging conference today.

8 THE COURT: I'm happy to have it.

9 MR. BALAREZO: Your Honor, I apologize, we are
10 having -- maybe we should move because we are having problems
11 hearing --

12 THE COURT: The problems are hearing
13 Ms. Parlovecchio?

14 MR. BALAREZO: Yes. A, because she's talking that
15 way (indicating) --

16 MR. PURPURA: -- and B, because we have an
17 interpreter sitting next to us.

18 THE COURT: What can we do to help you?

19 MR. BALAREZO: Perhaps we will move over there?

20 MS. PARLOVECCHIO: At the same table, perhaps?

21 MR. BALAREZO: We'll do that.

22 THE COURT: But we are not going to start all over
23 again.

24 MR. BALAREZO: Just for the obvious, your Honor.

25 THE COURT: Someone take a picture. No, I'm

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1 kidding, of course. No pictures.

2 Anything else on 48?

3 MR. PURPURA: Your Honor, just hold on one second.

4 I apologize.

5 THE COURT: Yes.

6 (Pause.)

7 MR. PURPURA: We are fine. Thank you.

8 THE COURT: Okay.

9 Anything on 49? Fifty? Fifty-one? Fifty-two?

10 MS. PARLOVECCHIO: Oh, your Honor, I'm sorry, we
11 just noticed a small typo, yes. Okay. So under Count Nine,
12 use of firearms, the second sentence --

13 THE COURT: On 51?

14 MS. PARLOVECCHIO: On 51. The second sentence in
15 that paragraph starts, "in reads" --

16 THE COURT: Thank you. Got it.

17 Anything on 52? Fifty-three? Fifty-four?

18 MS. PARLOVECCHIO: Your Honor, just with regard to
19 the aiding and abetting instruction for the firearms --

20 THE COURT: Yes.

21 MS. PARLOVECCHIO: -- we have some additional
22 language from *United States vs. Rosemond*. It's at 134 -- I'm
23 sorry. It's 572 U.S. 65, and that's from 2014.

24 THE COURT: Can you read it?

25 MS. PARLOVECCHIO: It actually -- I believe pursuant

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1 to this case, it requires the aiding and abetting instruction
2 that we had in our proposed charge. It actually adds an extra
3 requirement for aiding and abetting, an extra requirement
4 above and beyond the typical aiding and abetting instruction.
5 It requires that the defendant had prior knowledge of the guns
6 involvement in the drug trafficking crimes.

7 THE COURT: It's an additional element imposed by
8 that case?

9 MS. PARLOVECCHIO: Yes.

10 THE COURT: Okay. And where would you insert that?

11 MS. PARLOVECCHIO: I think it would be --

12 THE COURT: I guess we would have to say now there's
13 a new element; is that right? Or is this something within an
14 existing element?

15 MS. PARLOVECCHIO: It's just an extra requirement.
16 We actually had this in our proposed instruction from
17 *United States vs. Rivera*.

18 THE COURT: Yes. Where would it go?

19 MS. PARLOVECCHIO: It was from -- where did we put
20 it? Let me see. So after the -- I think you had a reference
21 back to the -- you say something like, I've already explained
22 to you aiding and abetting liability, and we would suggest
23 that after that we insert the following language -- which,
24 again, we will provide to the court reporter -- and it's at
25 the bottom of page 44 of our request to charge. I will read

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1 the first sentence, but it actually is a bit of a lengthy
2 instruction.

3 THE COURT: I would like to hear the whole thing, if
4 you don't mind.

5 MS. PARLOVECCHIO: Sure. I will take it off my
6 lapel so I can be heard very well.

7 Okay. "To find the defendant guilty an as aider and
8 abettor on this count, however, it is not enough to simply
9 find beyond a reasonable doubt that the defendant knew a
10 firearm would be used, carried, or possessed during the
11 commission of the underlying crime of violence or drug
12 trafficking crime; rather there are two additional
13 requirements that apply to aiding and abetting the use,
14 carrying, or possession of a firearm. In order to find the
15 defendant guilty of aiding and abetting the use or carrying of
16 a firearm during and in relation to or possession of a firearm
17 in furtherance of a crime of violence or drug trafficking
18 crime, you must find that the defendant, one, took an
19 affirmative act in furtherance of that offense; two, with the
20 intent of facilitating the offense's commission."

21 THE COURT: Well, the defense certainly isn't going
22 to object to that.

23 MR. PURPURA: There's no objection, obviously.

24 THE COURT: Anything else, or can we just add that
25 language?

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1 MS. PARLOVECCHIO: I mean, it's actually quite --
2 sorry, just looking back at this again, it's quite a lengthy
3 charge and a request to charge. It goes on for three more
4 pages, which we can provide to defense counsel, have them look
5 over it, and provide to the Court as well.

6 THE COURT: I would really like to resolve it now as
7 to what we are going to do.

8 MS. PARLOVECCHIO: Sure.

9 THE COURT: Do you need just the paragraph you read,
10 or do you need all three pages?

11 MS. PARLOVECCHIO: Would the Court accept some
12 additional language after the court session ends today?

13 THE COURT: Yes. I mean, I'm not going to say no to
14 that. It's not my first choice, but it's not unreasonable
15 given the complexity of this charge, but get it to us soon, as
16 soon as you go back, and we'll look at it; and run it by the
17 defense first and see if you can get agreement on it.

18 MS. PARLOVECCHIO: Yes, your Honor.

19 THE COURT: All right. Anything else on 54?
20 Fifty-five? Fifty-six? Fifty seven? Fifty-eight?

21 And then we've only got two concluding pages at the
22 end. I want to note that I've changed -- this here draft has
23 us identifying jurors by name, and of course we can't do that,
24 so we are going to identify them by -- referencing their juror
25 number, not their name. That's in two places in the second

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1 full paragraph on page 59 and, again, in the penultimate
2 paragraph on page 60.

3 MR. BALAREZO: Your Honor, if we could have just one
4 second?

5 THE COURT: Sure.

6 (Pause.)

7 MR. PURPURA: Your Honor, on page 60, middle
8 paragraph, just before "Reaching a Verdict" --

9 THE COURT: Yes.

10 MR. PURPURA: -- it says, "Either way, your verdict
11 must be unanimous."

12 THE COURT: Right.

13 MR. PURPURA: "All of you must reach the same
14 conclusion as to each charge." The CCE as well -- it should
15 say "charge and violations."

16 THE COURT: So do you want to say, "as to each
17 charge and at least one violation"?

18 MR. PURPURA: Well, it has to be three -- for the --
19 that would be confusing, because the CCE requires --

20 THE COURT: Yes.

21 MR. PURPURA: -- unanimity of the three, which is --
22 I think "violations" alone would be sufficient.

23 MS. PARLOVECCHIO: The only issue we would have with
24 just "violations" generally is that that -- if there are some
25 violations where folks are in disagreement, obviously they

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1 can't find proven on those violations, but I think maybe if we
2 just include the language "three or more violations," it would
3 just be clearer and track the language --

4 THE COURT: So we can say, "as to each charge and as
5 to the CCC charge, three or more violations."

6 MR. PURPURA: That's fair, yes.

7 THE COURT: Okay?

8 MR. PURPURA: Yes.

9 MS. PARLOVECCHIO: That's fine with us.

10 THE COURT: Okay.

11 Then any comments as to the verdict sheet?

12 MR. BALAREZO: Your Honor, just as an initial
13 matter, we object to the -- with respect to Count One, we
14 object to the headings above each violation. For example, on
15 page 1 where it says, "international cocaine distribution with
16 The Norte del Valle Cartel," and subsequent headings of the --
17 above particular counts for violations, we don't believe that
18 the verdict form should be the place where, in effect, the
19 Government is pointing out to the jury what evidence goes with
20 what. That's what's closing is for, and they should just list
21 the violations and leave it at that.

22 MS. PARLOVECCHIO: Your Honor, this tracks our
23 indictment, these headings. If the Court chose to send the
24 indictment back with the jury, these headings would track
25 what's already in the indictment, so there's nothing here --

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1 there's no, you know, additional help to the jury. It's just
2 helping them track what is already in the charging document.

3 MR. BALAREZO: I understand that the indictment is
4 not going back, so --

5 THE COURT: Right. But there's convenience reasons
6 for not sending the indictment back, but but for those reasons
7 it would be going back, and if it did, you would have exactly
8 this. So you're saying the fact that there are unrelated
9 reasons for not sending the indictment back should obviate the
10 need for titles in the verdict form?

11 MR. BALAREZO: Not that eloquently, your Honor.

12 THE COURT: It's not too eloquent to me.

13 MR. BALAREZO: It just seems that the headings that
14 are -- that are --

15 THE COURT: Would you rather say "alleged"?

16 MR. BALAREZO: I would rather not have it at all.

17 It just seems that these headings sort of lend credence to the
18 Government's evidence. You are saying these counts belong to
19 this cartel. I mean, I think the jury needs to find, or at
20 least decide, that there was a North Valley Cartel that
21 conspired with Mr. Guzman, et cetera, and you're basically
22 saying this is -- this is what it is.

23 THE COURT: I think it's a complex case and we need
24 to give the jury some guidance as to what they should be
25 focussing on. I think we can change the subheadings to say,

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1 for example, "charge," colon, "international cocaine
2 distribution with The Norte del Valle Cartel," so that it
3 doesn't look like it's a fait accompli, but I do think they
4 have to know that's what they are looking to determine whether
5 he's been proven guilty beyond a reasonable doubt as to that.
6 So I'm not going to delete all the titles; I think that would
7 just create too much confusion.

8 MR. BALAREZO: Your Honor, we then -- given that, we
9 would take the "alleged" appellation somewhere.

10 MS. PARLOVECCHIO: We would object to "alleged."

11 THE COURT: Really?

12 MR. PURPURA: That's what the indictment is. The
13 indictment is an allegation. That's what you would get if the
14 indictment went back.

15 MS. PARLOVECCHIO: I mean, if you are to add
16 language, I think Your Honor's proposal, "charged," would be
17 preferable.

18 THE COURT: I'm going to say "charge," C-H-A-R-G-E,
19 colon, before each one of these subheadings so they will not
20 take it as something proven.

21 MR. BALAREZO: We object, but --

22 THE COURT: Okay. I think "charge" is a fair
23 compromise, so I'm going to overrule your objection.

24 Anything else on the verdict form?

25 (Pause.)

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1 THE COURT: Okay. We've got a couple of open items
2 that we've discussed in the conference, let's close that up
3 this afternoon, and we will see you for closings tomorrow
4 morning at 9:30.

5 Anything else we need to address?

6 (Pause.)

7 THE COURT: Apparently, there may be.

8 Oh, yes, the Government's motion in limine.

9 MS. PARLOVECCHIO: Yes, your Honor.

10 MR. PURPURA: Did you want the defense to address
11 that, your Honor? If so, Mr. Townsend, on behalf of
12 Mr. Lichtman, is going to address that motion.

13 THE COURT: Thank you, Mr. Townsend.

14 MR. TOWNSEND: Judge, the prosecutors' motion in
15 limine has two points that they wanted to draw; first, that
16 the defense should be precluded from doing something that
17 there's already a motion in limine saying that they can't do,
18 so obviously we have no intention of doing it, which is the
19 selective prosecution argument. It's my understanding that
20 Mr. Lichtman is not going to make a selective prosecution
21 argument to the jury and, therefore, I don't think any ruling
22 needs to be made on that. It's already been done.

23 THE COURT: I think there's a question about what
24 constitutes a selective prosecution argument. Let me tell you
25 how I break it down. I think we may be on the same page, but

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1 I want to make sure.

2 The defendant is free to argue or to attribute
3 culpability for the charged acts to Mayo Zambade. He's free
4 to do that, okay? What he can't do is attack the Government's
5 motive in bringing the prosecution. That, to me, would be
6 saying you've selectively prosecuted this. You want to point
7 to another defendant, fine. But you can't say, and the reason
8 that's happening is because they are protecting him with the
9 Mexican government, because there is just no evidence on that.

10 MR. TOWNSEND: I think I agree with that, and that
11 kind of plays into the second point also, which goes to the
12 United States Government shielding or protecting the Mexican
13 government. It's my understanding that the -- there's not
14 going to be any direct argument that the
15 United States Government is doing this, but rather that
16 Mr. Lichtman, more or less, intends to lay out the facts as
17 they haven been elicited at trial through the testimony that's
18 been deemed probative and relevant enough to be heard by the
19 jury allowing the jury to draw whatever conclusions they are
20 going to get.

21 So he's going to say, you know, you heard this and
22 this and this. Not necessarily taking that step to argue,
23 then, that, you know, they are doing this or they are doing
24 that, but allowing the jury to make whatever inference the
25 jury is going to make from it.

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1 THE COURT: Are you able to tell me what "this and
2 this and this" is?

3 MR. TOWNSEND: I wish I could, Judge. As far as I
4 know, it is still a work in Mr. Lichtman's mind, and there's a
5 very, very rough draft that has been in circulation among us.
6 I could not tell you exactly what "this and this and this" are
7 going to be, except that, as your Honor is aware, part of the
8 defense in this case has been kind of circulating around with
9 Mayo Zambade and his potential role as somebody who is
10 obviously part of this organization and, in our minds, really
11 a culpable party. It's not to say that we are going to argue
12 that there's a selective prosecution and that, you know, Mayo
13 Zambade has been allowed to do whatever he wants to do because
14 he's influencing the Government to only go after Mr. Guzman,
15 but I think that it's okay for Mr. Lichtman to go through the
16 testimony that's been elicited about the fact that Mayo
17 Zambade has never been arrested, the fact that Mayo Zambade
18 was at least involved in the original prison escape, and
19 certain other things that have been brought out regarding what
20 Mayo Zambade has done without saying that this is, you know,
21 because the United States Government has been -- or the
22 Mexican government or any government has been, you know,
23 coerced or in some way interfered with in order to go after
24 Mr. Guzman instead of Mr. Zambade.

25 THE COURT: Well, yes and no.

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1 First of all, I can't really prohibit the defendant
2 from referencing facts that are in the record. Mr. Townsend
3 is telling me that Mr. Lichtman is not going to ask the jury
4 to draw the inference from those facts -- or from that
5 evidence that, in fact, the Mexican government in conjunction
6 with the United States Government, or by itself, is seeking to
7 tag Mr. Guzman with this in order to protect Mr. Zambade.

8 That's what I hear you saying; he's not going to argue that.

9 MR. TOWNSEND: That's my understanding. That's my
10 understanding. I can't obviously speak --

11 THE COURT: Well, that's my ruling.

12 MR. TOWNSEND: And I will certainly communicate
13 that.

14 THE COURT: But I have to tell you, it raises the
15 question -- it raises two questions: One is if he's not going
16 to be at least implicitly asking the jury to draw that
17 inference, then why is he eluding to those facts? And then it
18 raises the more fundamental question as to, why did I let
19 those facts in? But they're in, and I think the compromise
20 that Mr. Townsend suggested is probably the best we can do.

21 MS. PARLOVECCHIO: May I be heard, your Honor?

22 I'm sure your Honor understands why the Government
23 filed this motion. I think we objected maybe three, possibly
24 four times during the defense's opening statements. By filing
25 this motion, we are hoping to avoid that this time around by

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1 precluding these arguments. Now, certainly, I understand
2 these facts came into evidence during trial. Even without
3 Mr. Lichtman explicitly asking the jury to draw those
4 conclusions, I submit he could pose rhetorical questions and
5 by the tone of his voice ostensibly make -- ask them to draw
6 those conclusions themselves without explicitly saying it.
7 So, you know, the Court is going to give the jury an
8 instruction saying, you know, you are not to speculate about
9 people who are not sitting at the defense table who are not on
10 trial here. So really the only purpose for arguing those
11 particular facts is to ostensibly make a selective prosecution
12 argument of the type that we have outlined in our brief.

13 THE COURT: No, no. Some of those facts, because we
14 still don't know what "this, this, and this" is, but some of
15 them can simply go to pointing the finger at Mr. Zambade as a
16 way of exonerating the defendant, which I have said they can
17 do and they should be able to do.

18 MS. PARLOVECCCHIO: Of course.

19 MR. PURPURA: Judge, hopefully -- I will go over it
20 again with Mr. Lichtman. Clearly, it has been our theory, at
21 least, that it's Mayo Zambade and what Mayo Zambade has done.
22 If Mayo Zambade has bribed the Mexican government, that's to
23 benefit him and his organization. It has -- it's not that the
24 Mexican government on its own sua sponte is protecting Mayo
25 Zambade and/or the United States Government is affiliated

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1 whatsoever. It's Mayo Zambade who has, from the very
2 beginning, orchestrated this, and that's why we are here
3 today.

4 THE COURT: To protect himself.

5 MR. PURPURA: That's correct.

6 THE COURT: See the distinction? To protect
7 himself.

8 MS. PARLOVECCHIO: Right, there is a distinction --

9 MR. PURPURA: And to continue his drug trafficking
10 organization --

11 THE COURT: Right.

12 MR. PURPURA: -- which is ongoing today.

13 MS. PARLOVECCHIO: Right. But I think the argument
14 that was made at openings and has been made at sidebar
15 numerous times is that Mayo Zambade bribed the Mexican
16 government to put a target on the defendant's back, which
17 is --

18 THE COURT: That's off limits -- let me be very
19 clear about that -- because there is zero evidence suggesting
20 that whatever bribes Zambade paid were for the purpose of
21 incriminating this defendant. Zero.

22 MR. TOWNSEND: Yes.

23 THE COURT: So don't do that.

24 MR. TOWNSEND: Understood.

25 THE COURT: That's why I am emphasizing to you,

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1 Mr. Purpura, if he's doing it to say he bribed the Mexican
2 government to protect himself and his organization, that's one
3 thing, and he's a -- I guess you could try to draw the
4 inference, he's a much bigger drug dealer and therefore these
5 things you have been hearing about, they are really attributed
6 to him. That's one thing. You want to do that, that's okay.

7 But what you can't do is say, you know Mayo Zambade
8 is such a corrupt guy that he paid the Colombian government to
9 pin this on the defendant, because there's nothing suggesting
10 that.

11 MR. PURPURA: Not that. Not that. But what the --
12 evidence has been generated, at least we believe it's been
13 generated in at least cross-examination in this case,
14 reasonable inference, is that Mayo Zambade has benefited --
15 he's benefited from the notoriety that Joaquin Guzman has
16 gained since post '93. He's benefited that the Mexican
17 authorities are chasing what we consider to be the rabbit in
18 this particular case. He's benefited from the 2015 escape, as
19 we heard the analyst say, that he is now larger than life; his
20 reputation is enhanced by that. So he's benefitted by all
21 these things, we can say that, because that's what the
22 evidence has generated.

23 THE COURT: I think that's okay.

24 MR. PURPURA: Fair enough.

25 THE COURT: I mean, I don't know if you disagree

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1 with that, Ms. Parlovecchio, but I think that's okay as long
2 as it doesn't take that next step. It's one thing to say:
3 Circumstances have pointed the finger at this defendant,
4 including the circumstance of the Zambade, very big drug
5 organization. The circumstance.

6 It's quite another thing to say: This is a
7 conspiracy between Zambade, the Mexican government, and maybe
8 the United States Government to shift blame onto the
9 defendant.

10 Circumstance, I'm inclined to let them have. Act of
11 blame shifting, that would be selective prosecution, and I
12 won't let them have it. I think that's the best we can do.

13 MS. PARLOVECCHIO: I think that's fine, your Honor.

14 THE COURT: Okay. So we do have agreement.

15 Just let Mr. Lichtman see this transcript or give
16 him a good summary, because if he violates it, I'm going to
17 have to give a very strict instruction to the jury about what
18 is not evidence in this case, which may have a circumstantial
19 impact beyond the particular point he's trying to make anyway.
20 Okay?

21 MR. PURPURA: Will do.

22 THE COURT: Anything else we need to cover?

23 MS. PARLOVECCHIO: Nothing further from the
24 Government, your Honor.

25 THE COURT: Thank you all very much.

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1 MS. PARLOVECCHIO: Thank you.

2 MR. BALAREZO: Thank you.

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4 (Matter adjourned to January 30, 2019 at 9:30 a.m.)

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